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In the matter of:

Digital Performance Right in
Sound Recording and Ephemeral
RecordingDocket No.
2000-9CARP DTRA
1 & 2CARP Hearing Room
LM-414
Library of Congress
Madison Building
101 Independence Ave, SE
Washington, D.C.Thursday
September 13, 2001

The above-entitled matter came on for hearing,
pursuant to notice, at 9:00 a.m.

BEFORE

THE HONORABLE ERIC E. VAN LOON	Chairman
THE HONORABLE JEFFREY S. GULIN	Arbitrator
THE HONORABLE CURTIS E. von KANN	Arbitrator

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ORIGINAL

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None.

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P-R-O-C-E-E-D-I-N-G-S

(9:04 a.m.)

CHAIRMAN VAN LOON: Well, good morning,
everyone.

The panel's maybe learned the lesson again
of the importance of having a good night's sleep and
not making judgments late in the day when you're
tired.

We've decided there's a couple of
different ways to think about schedule, and upon
reflection perhaps one of the picture ways to reflect
on where we stand is that way back when in June when
we set out the whole schedule we had anticipated that
this hearing would go through today and end today.
And we have had a force majeure event, I think Mr.
Steinthal's characterization is apt, that made us lose
a day. So if that translates into we add a day, one
more day, Friday, it's hardly the end of the world.
We have an important witness. It's important that that
be done right.

And so, with the caveat that we're not
looking forward to seeing anyone on Saturday, we're

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1 ready to proceed with the cross examination, unless
2 there are additional administrative things this
3 morning.

4 MR. GARRETT: Just a couple of things, Mr.
5 Chairman. One, we did ask yesterday for the people at
6 RIAA to put together that list of licensees with
7 addresses, and we should have something over today.

8 CHAIRMAN VAN LOON: Oh, thank you.

9 MR. GARRETT: Secondly --

10 CHAIRMAN VAN LOON: Related to that, we
11 have some additional craftsmanship of Mr. Joseph that
12 we're happy to incorporate.

13 MR. GARRETT: Secondly, an issue arose
14 yesterday concerning the different binders that we
15 have put out as to whether or not they were complete.
16 As I had said yesterday, our intent was to include all
17 documents in those binders.

18 CHAIRMAN VAN LOON: Uh-huh.

19 MR. GARRETT: What happened is is that we
20 did not want to include duplicates of emails. Our
21 intent was not to make them bigger than they really
22 were.

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1 So, in pulling out those emails, it
2 appears that we also did not include some of the
3 attachments. We've been able to identify about nine
4 or ten attachments in the binders that are not
5 included in that. And we can put together a complete
6 list of those and, you know, make them available.

7 The other way we can continue to proceed
8 is simply to have Mr. Steinthal identify the documents
9 that he wants to include separately.

10 CHAIRMAN VAN LOON: Uh-huh.

11 MR. GARRETT: As I say, our review last
12 night disclosed about nine or ten.

13 With respect to MMM, all of the documents
14 that we had discussed yesterday were in that binder
15 with the exception of the attachment to one email.
16 And the same was true of Lomasoft, except one
17 attachment, and that there are some other ones from
18 other licensees.

19 CHAIRMAN VAN LOON: Well, in the interest
20 of saving perhaps a couple of more acres of trees if
21 it's acceptable to Mr. Steinthal, my inclination would
22 be to leave the bound documents they are, have those

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1 be the ones that go into the record and then
2 supplement it each time as appropriate if there's a
3 few pages here or there that were not included, add
4 those separately. And whatever is easiest from a
5 paper handling point of view, Mr. Steinthal, for you
6 on cross.

7 Rather than redoing a bunch of these
8 things in total, just to add a page or two.

9 MR. STEINTHAL: My only reaction to that
10 is, number one, I understand that at least one
11 documents that we found yesterday that wasn't in the
12 binder was an attachment, I think the other one was
13 not. But not to quibble about that. I think that we
14 will agree, as I said, on the record to allow those
15 binders to come in subject to our ability to review
16 them. And maybe the thing to do is -- because one of
17 my issues is there may be some things in there that
18 shouldn't be in there.

19 CHAIRMAN VAN LOON: Sure.

20 MR. STEINTHAL: And that we haven't had a
21 chance to really go through since we just got the
22 binders this week.

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1 And I'm happy to try to minimize the paper
2 issue as much as possible and work with Mr. Garrett.
3 So, if they give us the additional materials that they
4 think should be in the binders, and then we can review
5 them as a whole, I think that the law firms can work
6 together to make sure that your binders are complete.

7 I have, you know, the exception of the
8 crosses where we identify documents as an SX number
9 where it becomes easier for you and we to follow along
10 with the SX number, I'm happy to try to use the
11 binders on a going forward basis and minimize the
12 paper that way.

13 So, I think it's just a question of post-
14 Friday as quickly as possible to review the binders
15 and try to agree on a joint, you know, submission that
16 these are the binders. And I think we should do that.

17 ARBITRATOR VON KANN: Would it make sense
18 to put that matter on sort of the same agreed schedule
19 that we had for working out any issues about the
20 rebuttal, and take it up at our October 10 conference
21 if there are disputes?

22 MR. STEINTHAL: October 1?

1 ARBITRATOR VON KANN: Well, October 1 was
2 sort of a scheduling conference.

3 MR. STEINTHAL: Right.

4 ARBITRATOR VON KANN: And October 10 was
5 going to be resolve disputes between you --

6 MR. STEINTHAL: Right.

7 ARBITRATOR VON KANN: -- that might still
8 exist. Either one.

9 MR. STEINTHAL: Either one. We can avoid
10 the dispute on this.

11 ARBITRATOR VON KANN: Okay.

12 MR. STEINTHAL: It sounds like we're
13 there. It's just a matter of review.

14 CHAIRMAN VAN LOON: It does raise one
15 matter in which there's been some delinquency, and
16 that is we have talked on several different occasions
17 about getting a complete exhibit list. And I think
18 that that was going to be prepared and you were going
19 to -- through Friday, and you were going to show it to
20 each other on a Monday, and then bring to our
21 attention any problems on Tuesday. It's not the end
22 of the world, but we don't have that; everybody's been

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1 busy. But we still very much would like to receive in
2 a timely fashion your comprehensive list of exhibits
3 to make sure it squares up with the file drawer that
4 we've got of ones that have been added.

5 ARBITRATOR GULIN: Mr. Chair, I'm just
6 wondering. Given the difficulties with these binders
7 that we have now, whether it might be wise to simply
8 wait until that's all resolved and then to give us a
9 total list that would include everything that's been
10 admitted during this direct phase, rather than receive
11 piecemeal.

12 CHAIRMAN VAN LOON: I think that does make
13 a lot of sense, given the way circumstances have
14 evolved. And we'd have it then in the month between
15 direct and rebuttal and be able to deal with it at
16 that time.

17 MR. GARRETT: Just one other matter I
18 would raise. During the hearings at various points we
19 had requested certain documents from particular
20 witnesses. And I have provided a list of all of those
21 requests to the other side. And we'll get those in
22 relatively short order as well. But I just wanted to

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1 create a record that we obviously still want those
2 documents and are looking forward to receiving them.

3 CHAIRMAN VAN LOON: Mr. Steinthal, do you
4 know of a likely schedule for those documents to get
5 Mr. Garrett?

6 MR. STEINTHAL: Well, we just spoke
7 briefly this morning about that list materials. I
8 know that there were documents produced on the 10th,
9 unredacted versions of materials that had previously
10 been redacted, and a couple of additional projection
11 documents, for example, that were allocated or
12 specific to a given company.

13 As far as the other documents that have
14 come up, we're going to get a list and we're going --
15 if there's a delinquency, then we'll take care of it
16 right away.

17 CHAIRMAN VAN LOON: Okay. Related to
18 promised documents, we are also still hoping, Mr.
19 Garrett, we received I think it was yesterday Mr.
20 Fine's analysis of purchases by demographics rather
21 than purchasers. And I believe that your witnesses or
22 the RIAA was going to do a similar presentation and

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1 give us an opportunity to see to what extent they line
2 up or not. So, we're still hoping to receive that.

3 MR. GARRETT: That is correct, Your Honor.
4 I'll check on that again. I have no heard back since
5 the last report that I had giving that they were going
6 back and trying to rerun the data. And they said that
7 they could do where they would be able to show how
8 many purchased one, how many purchased two and having
9 purchased maybe three and above, but otherwise the
10 data was not in such -- collected in such a fashion
11 that they would be able to do much better than that.

12 CHAIRMAN VAN LOON: The one last
13 procedural matter on my list is sort of an update in
14 the thinking with regard to testimony from Alanta's
15 Morisette and is it Daniel Fagin -- David Fagin?

16 MR. STEINTHAL: Everyone wants to say is
17 Donald Fagin, but it's David Fagin.

18 CHAIRMAN VAN LOON: David. Obviously the
19 air traffic system is still largely closed down, which
20 may be the greatest thing that every happened to
21 AMTRAK. But are you anticipating any likelihood at
22 all that they would appear this week?

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1 MR. STEINTHAL: No. As a practical
2 matter, you know, we've got one witness who would be
3 coming in from -- with his counsel from London, Ms.
4 Morissette from Los Angeles. And it's impossible to
5 get people in and make any kind of hard plans on that.

6 I thought that we'd agreed that under the
7 circumstances we could bring them back and have them
8 testify during the rebuttal phase?

9 CHAIRMAN VAN LOON: And is that agreed
10 with you, Mr. Garrett, on the record?

11 MR. GARRETT: That's fine.

12 CHAIRMAN VAN LOON: And in the event that
13 -- unfortunate event if rebuttal just got so totally
14 fully booked, if this was not possible, I would hope
15 that we have a-- be able to have a stipulation that
16 their testimony could be received even though you have
17 not had a chance to cross examine them?

18 MR. GARRETT: I'd like to review their
19 testimony again, but I suspect that's not a problem.

20 CHAIRMAN VAN LOON: All right.

21 MR. STEINTHAL: The last issue is, and
22 given last night, the binder of submissions on the

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1 customized radio issue, the rulemaking proceedings --

2 CHAIRMAN VAN LOON: Oh, yes.

3 MR. STEINTHAL: -- on radio and the motion
4 to dismiss the seven -- you may that motion already
5 and it's in the Copyright Office record. I don't know
6 if you have it. But the motion to dismiss the seven
7 companies or their direct cases relating to this, and
8 then the ensuing complaints, if you will, the
9 infringement actions. We're not bothering to include
10 in the binder the motion practice relating to whether
11 people are in the right forum and the like. It's just
12 to really frame the issues for you as to at what
13 juncture certain proceedings were filed and what was
14 seen on the record. It just may be of relevance to
15 you. A lot of these issues have come up one course or
16 another.

17 I don't know if we had a chance to just
18 access whether it's a complete binder.

19 MR. NEWBERG: It looked complete. You
20 might want to put certain tabs behind it. It's in a
21 chronological order, it seems, so that the complaints
22 are between the comments and the motion, and its

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1 opposition. It's just a little hard to read, but it
2 appears to be complete.

3 MR. STEINTHAL: We'll make sure. It may
4 have been just a copy that we hastily made yesterday.
5 At the next break I will provide the panel with the
6 binders on that. A lot of it are exhibits, so you'll
7 have probably some repetition there in terms of a
8 document that's attached to one that's in another
9 place.

10 CHAIRMAN VAN LOON: Yes. Excellent. Okay.

11 Well then it appears that we've finished
12 our administrative matters almost to the second, in
13 the 15 minutes that set aside on your tentative
14 schedule.

15 (Whereupon, the proceedings went into
16 Closed Session.)

17

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CERTIFICATE

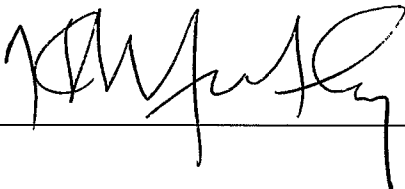
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the matter of: Hearing: Digital Performance Right
 in Sound Recording and Ephemeral
 Recording,
 Docket No. 2000-9 CARP DTRA 1 & 2

Before: Library of Congress
 Copyright Arbitration Royalty Panel

Date: September 13, 2001

Place: Washington, DC

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
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A handwritten signature in dark ink, appearing to be "R. M. Furley", is written over a horizontal line.

1 of 100 DOCUMENTS

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February 9, 2000, Wednesday

SECTION: FINANCIAL NEWS

DISTRIBUTION: TO BUSINESS, TECHNOLOGY AND MUSIC EDITORS

LENGTH: 494 words

HEADLINE: WWW.COM Signs Agreement with RIAA -Largest Webcaster to Have The Rights to Broadcast Music; WWW.COM's Business Model Ensures that Creators and Copyright Holders Will Share Revenues from Music Streamed Via the Internet

DATELINE: LOS ANGELES, Feb. 9

BODY:

WWW.COM, Inc., (<http://www.com>) the world's largest Internet broadcast network, today announced that it has signed an agreement with the Recording Industry Association of America (RIAA), the trade group representing U.S. and many international record labels which ensures that artists and labels will receive royalties on performances of their copyrighted music.

With today's news, WWW.COM becomes the largest online music broadcaster to have a license to webcast millions of songs produced by top-tier recording artists. Under the terms of the RIAA agreement, WWW.COM will pay royalties to artists and labels for all music streamed via the Internet to audiences throughout its network. WWW.COM's approach of recognizing the rights of artists, creators and copyright holders ensures quality broadcasting and promotes the development and distribution of online music.

"We are thrilled to sign the agreement with RIAA," said Scott Purcell, president and founder of WWW.COM. "Our company will help artists and record labels reach the broadest possible audience. And this agreement means those same artists and labels will fairly share in the benefits of these new services."

"This agreement is terrific news for record labels and the music community as a whole," said Steve Marks, senior vice president for business affairs, RIAA. "WWW.COM recognizes the value of music and is entering into a partnership that will benefit the creators of music. WWW.COM deserves kudos for its initiative to compensate those who create the content that makes WWW.COM an exciting site."

About RIAA

The RIAA represents hundreds of companies engaged in mobilizing the talents of musicians, artists and producers to entertain millions of people worldwide. Its members create, manufacture and/or distribute approximately 90 percent of all legitimate sound recordings produced and sold in the United States.

About WWW.COM

Los Angeles-based WWW.COM (<http://www.com>) is the Internet's leading Business-to-Business Music Webcasting Company and the largest provider of turnkey solutions for websites worldwide. The company broadcasts originally programmed stations, supported by a digitized music collection of nearly 300,000 songs and more than 200 music stations. Launched in July 1999, the company's mission is to be the dominant provider of music and entertainment on

SX70

the Internet; building a powerful broadcast network on the convergence of radio, television and print with a wide range of compelling programming.

Registered trademarks, trademarks and servicemarks may be the property of their respective owners.

SOURCE WWW.COM, Inc.

CONTACT: Christine Brodeur, christine@murphyobrien.com, or Kimberly Shepard, kimberly@murphyobrien.com, both of Murphy O'Brien, 310-453-2539, for WWW.COM, Inc.; or Michael Romano of WWW.COM, Inc., 949-936-3000, michaelr@www.com

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PRESS RELEASES

Exclusive European Joint Venture with Leading Broadcaster in the UK gives birth to WWW.COM EUROPE

WWW.COM Expands Globally With London-Based Carlton Communications

Los Angeles, May 24, 2000 - WWW.COM, Inc., (<http://www.com>) the world's leading Music Application Service Provider (ASP), today announced its formation of an exclusive European joint venture with Carlton Communications Plc, the largest independent television broadcaster in the United Kingdom (UK). With the formation of WWW.COM EUROPE, the company continues to expand its market reach, content, and brand awareness worldwide.

Carlton is investing \$11.6M in cash into the WWW.COM parent company. Carlton will also hold a seat on WWW.COM's Board of Directors. Additionally Carlton will invest 51% into WWW.COM EUROPE.

"In less than a year we have built WWW.COM into the world's largest Music ASP and second most popular radio site in the world," said Scott Purcell, president and founder of WWW.COM. "With Carlton's access to mass audiences, knowledge of the UK entertainment market, and understanding of the rapidly developing Internet market, they are the right partner to expand WWW.COM overseas and allow us to continue building a true global brand."

@lliance, a joint venture established in December 1999 between Carlton and TF1, will also have an opportunity to take part in WWW.COM EUROPE, further extending the company's worldwide reach. @lliance was formed to acquire, develop, and distribute Internet businesses in Europe. TF1 is the major television broadcaster in France (35% audience share), and also operates the country's number one media site (<http://www.tf1.fr>).

"WWW.COM is a 'category killer' in online music and will be a tremendous addition to Carlton's entertainment portal, carlton.com. We will work with WWW.COM to make the site as successful in the UK and Europe as it is in the U.S.," said Michael Green, chairman of Carlton Communications.

ABOUT CARLTON COMMUNICATIONS

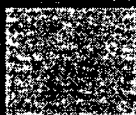
Carlton Communication Plc is a media company with two principal businesses: Carlton Media Group and Technicolor Group. Carlton Television is the largest free-to-air commercial broadcaster in the U with 34% of ITV advertising revenue. ITV is the UK's most watched television channel. Carlton own 50% of ONdigital, the world's first digital terrestrial television service offering more than 30 channels through an aerial.

ABOUT WWW.COM

Los Angeles-based WWW.COM (<http://www.com>) is the Internet's leading Music Application Service Provider (ASP) for websites worldwide. The company broadcasts over 230 originally-programmed stations, all under signed copyright agreements which ensure artists get paid, and co-branded music sites have no risk of litigation. Launched in October, 1998, the company's mission is to be the dominant ASP of music and entertainment on the Internet; building a powerful broadcast network of the convergence of radio, television and print with a wide range of technology services and infrastructure.

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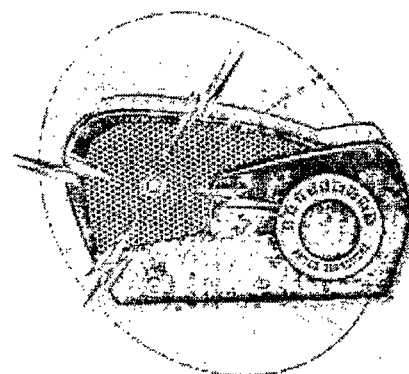


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WHO WE ARE

WWW.COM was the first in the industry to plant a flag saying, **"ARTISTS DESERVE TO BE PAID FOR THE MUSIC THEY CREATE!"** Under the terms of our agreement with organizations such as the RIAA, we pay royalties to artists and labels for all the music broadcasted through our 230+ stations. Our licensing approach means that artists will be paid (and can afford to make more music), and that our co-branded network partners won't have to worry about royalties and copyright issues.



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INDUSTRY ALLIANCES



Where we are...


Our headquarters are located in Los Angeles, with additional offices in London and San Francisco. We are currently working to open offices in the following cities: Miami, New York, Nashville, Paris, Singapore, Bombay, Sydney, Hong Kong...well, you get the idea - we're a global company and will be programming stations in local languages amidst the cultures where they originate.

What we are...

Our charter is to broadcast "commerce-enabled" music and entertainment to a worldwide audience via the Internet. The Company is uniquely positioned as the category killer in commerce-enabled broadcasting. As the Internet's leading Music Application Service Provider (ASP), we offer turn-key music solutions through our OnAirDirect™, OnAirNet™ and MicroSite Radio™ programs. These products enable online properties to integrate music, e-commerce, and banner and audio advertising services into their site's core product offering. And, since we're not a retailer ourselves, we work hand-in-hand with legal e-tailers such as Amazon.com to enable listeners to buy CD and other artist-related merchandise. We deliver CD-quality music in multiple formats and bit-rates, 230+ stations categorized by every possible music genre imaginable, hundreds of thousands of songs encoded for both Windows Media Player and Real Audio Player, live online support, and a host of other cool services.

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Posted at 10:38 p.m. PDT Wednesday, August 23, 2000

Soundbreak strikes deal with record labels

Start-up music site breaks ranks on fees

BY JON HEALEY

Mercury News

While the big dogs of the online music world haggle with the recording industry over fees for songs, upstart Soundbreak.com broke from the pack and cut a deal.

At issue is how much online radio and musical entertainment sites like West Hollywood-based Soundbreak have to pay for the music they play over the Web. The Recording Industry Association of America -- the record labels' trade association -- has demanded 15 percent of online revenues for the rights to play copyrighted songs, drawing stiff protests from the music sites.

The dispute is slated to go to arbitration before federal copyright officials, a process that could take a year or more to complete. Rather than waiting for the results, Soundbreak CEO Lisa Crane said Wednesday that her company has struck a deal with the RIAA that will pay the labels an undisclosed amount for their tunes.

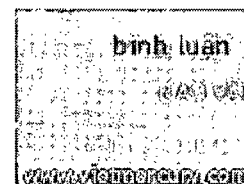
The deal makes Soundbreak the first major consumer-oriented music site on the Web to obtain a license from the RIAA, Crane said. By contrast, MTV Networks, America Online Inc., RealNetworks Inc. and other top online music providers are taking their case to a copyright arbitration panel, which will set a price for the rights to play songs.

The agreement means that Soundbreak will be paying more than conventional radio stations do for music, and potentially more than its online competitors.

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But Crane said the law was on the labels' side, so it made sense for her company to get the matter settled.

"I want to go forward and build a business. I want to get past this," she said. "I just don't want to spend five hours a week talking about it."

Unlike the typical online radio station, Soundbreak presents its disc jockeys as a central part of the entertainment. A digital camera presents live videos from the DJ booth or the Soundbreak studio, and the DJs chat with listeners via e-mail as they play tunes.

The company eventually hopes to let listeners download the songs being played, along with providing links to concert tickets and other items related to the music. To get such projects off the ground, though, the company had to make peace with the record labels, Crane said.

The service is free to users and Soundbreak has no plans to make users pay in the future, Crane said.

Soundbreak was having trouble getting the labels to provide their new releases. That problem should go away now, Crane said, enabling the company to spend less time and money cajoling record companies.

"The labels have said, 'We will be able to work with you a whole lot more' " once Soundbreak obtained a license from the RIAA, Crane said. "They will have one less handcuff on them."

The Digital Millennium Copyright Act of 1998 extended the record labels' copyrights to cover digital performances, such as when a song is broadcast over the Web. They have no such rights when their songs are played over the air by U.S. radio stations, although they can collect from European broadcasters.

Digital Music Association, a trade group for companies distributing music online, urged her not to strike a deal for fear of setting a bad precedent. But after she learned what the European broadcasters pay, "it made it a lot easier to stomach the idea that we would pay something," she said.

Even the Digital Music Association acknowledges that the law lets the labels demand payment for the use of their songs. The question, said DiMA director Jonathan Potter, is what the fair market value is. And that's what the arbitration is about.

Potter said he doesn't begrudge the move by Soundbreak, which just joined DiMA. He also said the deal isn't likely to influence the arbitration because Soundbreak isn't big enough to be consider a benchmark for the online music industry.

Crane said that Soundbreak isn't paying a portion of its revenues to the RIAA, as the labels had initially demanded. Instead, she said, the payments will be

based on the amount of traffic at Soundbreak.com.

Soundbreak is signing up 15,000 to 17,000 new users daily, hitting a total of 700,000 earlier this week, Crane said. On a peak day, 50,000 people will visit the site, she added.

Still, the deal means that Soundbreak's expenses will increase as it's still trying to develop sources of revenue. But Crane said it was better for Soundbreak to know what it has to pay, rather than trying to guess what the arbitrator might decide.

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Daily Variety

September 1, 2000

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HEADLINE: CRANE FLIES THE COOP: Prexy ankles netcaster Soundbreak.com

BYLINE: ANN DONAHUE

BODY:

Soundbreak.com prexy and CEO Lisa Crane stepped down Wednesday, after the technology incubator that funds the company expressed dissatisfaction with the financial losses at the digital music company.

Crane will be replaced by Paul Ryan, who previously was chairman of the Netco.

Soundbreak netcasts DJs who interact with Netizens via e-mail and live chats as they play music. Last week, the Netco announced it had signed a deal with the RIAA to pay royalties each time the company used a song from a member label.

The Netco is majority-owned by Acacia Research Corp., which holds three out of five positions on the company's board of directors. Ryan is also the chairman and CEO of Acacia.

Most of Acacia's investments are in nuts-and-bolts technology ventures, including biochip developer CombiMatrix Corp. and Greenwich Information Technologies LLC, which creates video and audio on-demand systems. Shares of Acacia closed up almost 7% at \$ 28.25 on the Nasdaq Wednesday. Acacia's one-year trading high was \$ 59, reached in January.

"I look forward to working with the talented team at Soundbreak as they continue to grow their worldwide audience," Ryan said in a statement. "Soundbreak is well funded and continues to execute on its business plan."

Soundbreak has been a big drain on Acacia's bottom line, according to documents filed with the Securities and Exchange Commission. For the first six months of 2000, Soundbreak cost the incubator \$ 9.4 million in operating expenses, with a note that "these costs may substantially increase in future periods." Acacia's total operating loss for the first six months of the year was \$ 16.8 million.

Soundbreak has long said it was ramping up for an offering on the stock market. However, that buzz has been dampened since tech stocks starting taking a dive in April. In a recent interview, Crane addressed the cost of doing business on the Internet, especially in light of her company's royalty deals with the RIAA, BMI, SESAC and ASCAP.

"Essentially they're saying that because you're on the Internet, you have to pay something that the radio stations don't have to," she said. "We're doing this

in part for budgeting reasons: If I wait, I'm going to be spending money on lawyers and time talking to them, and then I don't know complete costs until I go to (all the rights organizations). But I know what my total costs are going to be with the RIAA deal."

Crane joined Soundbreak in September 1999, prior to the company's launch in February. Before joining Soundbreak, she was veepee of NBCi and general manager of NBC.com. She also is a vet of Universal Studios, where she ran UniversalStudios.com as veepee of the studio's online division.

Crane was popular on the tech confab circuit, in part because of her status as one of a select few women to top a music-oriented dot-com. She is veepee of the Los Angeles Digital Coast Roundtable, and is on the board of advisors of eStar.com and Pulse Entertainment.

** contributor: Justin Oppelaar

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Sausage Firms, Melbourne IT CEO Resigns

BY PAUL WAIDE (profile) | September 14, 2000

Internet and technology stocks drifted in Thursday morning trade with lack lustre volumes plaguing the market. Sausage Software was stronger after shareholders voted for an amendment to the company's agreement with Telstra, adding anti-dilution provisions. Melbourne IT CEO Peter Gerrand's resignation triggered another bout of selling on the embattled stock.

The US' NASDAQ finally bounced off its losing streak, closing Wednesday up 1.15% at 3893.89. [Cisco](#), [Sun Microsystems](#) and [Oracle](#) lead the market as bargain hunters moved in. Other big US news, Chase Manhattan will take over investment bank JP Morgan for a reported US \$33 billion in stock.

[Sausage Software](#) (SAS) was up 4% to \$1.79 at midday. Shareholders voted to include anti-dilution provisions for Sausage's agreement with Telstra. Telstra currently holds 4.9% of Sausage. High profile former Sausage CEO Wayne Bos resigned his directorship at Sausage Wednesday. Bos is now CEO of investment company Mid East Minerals (MEM) which has gone from \$1 to \$2.65 since Bos was appointed last week.

Reports indicate [Melbourne IT](#) (MLB) CEO Peter Gerrand will step down as of the end of September, he will be replaced by COO Adrian Kloeden. Just after midday Melbourne IT stock was down 8.4% at \$2.74.

[Spike Networks](#) (SPK) surged 10.7% to 62 cents in Thursday morning trade, recovering from Wednesday's results inspired fall. Spike announced a loss of \$26.87 million on revenues of \$14.92 million for the year ending 30 June. In Thursday morning trade Spike announced the rebranding of SpikeRadio as SPIKE.com; that Nike selected Spike to develop Internet radio on [nike.com/2000](#); it has signed a licensing agreement with Recording Industry Association of America (RIAA - of anti-Napster fame) so Spike can develop radio content legally in the US.

The raft of final reports continued to flow into the ASX Thursday, in

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many cases triggering investors' "sell" reflex. Last mile Southeast Asian telco Circlecom (CCO) fell 5.9% to 48 cents at midday after announcing a loss of \$7.95 million for the year ending 30 June. The loss included an abnormal loss of \$5.49 million and revenues were \$2.15 million.

IT integrator IT&e (ITE) also fell despite announcing a profit. IT&e announced it was in the black \$448,000 for the year on revenues of \$53.96 million. At midday IT&e was flat at 75 cents after falling as low as 70 cents after the result was announced.

131Shop.com (OTO) was up 10% to 11 cents at midday. 131Shop's \$8.95 million loss on revenues of \$3.68 million not as bad as some expected.

At the other end of the stick, Infosentials (INF) dropped 16.7% to 25 cents at midday - a loss of \$6.95 million on revenues of \$11.72 million failing to impress.

LibertyOne (LIB) announced a loss of \$58 million for the six-months ending 30 June 2000. Revenues for that period were \$14.64 million. At midday LibertyOne stock was flat at 12.5 cents.

NASDAQ listed Kana Communications announced it has signed up David Jones (DJS), Telstra (TLS), and unlisted integrator, Comtech for enterprise Relationship Management (eRM) systems Thursday morning.

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Friday, February 23, 2001

News And Features

Spike Radio Talks Up A Comeback
By Brad Howarth

As an audio streamer, spike is scraping by on ad revenue, but its new b2b web concept could be the way to a fortune

The story of Spike Networks has become a metaphor for the Australian internet industry. Once one of Australia's best-known Web-design companies, Spike rode the internet boom into Asia and the United States with a peak share price of \$4 before it came crashing down in April last year. Today, Spike shares are trading about 16 cents.

Many stories have emerged about the ailing company, including a \$US267,000 launch party for its Los Angeles-based online radio station, Spike Internet Radio. Spike Radio began life in August 1999, next door to Spike's Los Angeles Web-design house.

The brainchild of Spike Radio's chief executive officer, Ashley Farr, the fledgling broadcaster was employing 40 full-time and 25 part-time staff by March last year and had become the core around which the former Spike Networks chief executive, Chris O'Hanlon, had hoped to realise his ambition of turning Spike into a global youth brand.

Set up as a conventional radio station but broadcasting as "streaming" audio over the internet, Spike's studios attracted pop-star visitors such as former Sex Pistol John "Johnny Rotten" Lydon, Beck and Groove Armada.

Created during the peak of the internet boom, Spike's Web-design business was unceremoniously shut in January last year as the company focused on Asia and its joint venture with Richard Li's Pacific Century

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CyberWorks. But, out of the ashes of that failed venture, **Spike Radio** has emerged as a business that is not only surviving but looks set to turn a profit in one of the most financially barren areas of the internet.

Spike Radio today is a very different business from 12 months ago. O'Hanlon left in April, and **Spike Radio** now has a core team of only 12. Although **Spike Radio** is still 85% owned by its Australian parent, **Spike Networks** (management owns the rest), it has almost no ties with its parent company.

In March last year, **Spike Radio** was burning through \$US650,000 a month to get to air, but since November, the management team of Farr, chief operating officer Nick Abrahams and chief information officer Ian Sexton has been running the station on a break-even basis. Advertising revenue of \$US3 million for 2000 has been enough to keep the company afloat.

More importantly, the team has developed a new broadcasting application that could make the company highly profitable within a few years.

Farr says the original vision for **Spike Radio** was of a company that would develop its own youth-oriented audio content - a business-to-consumer (B2C) internet model - and syndicate it to organisations interested in reaching the youth market.

But an even-greater opportunity existed. "There was an opportunity in the B2B (business to business) side of the radio business in providing third-party Web sites with audio and video," Farr says. "So we took a few of the relevant people out of Web design, put them into radio and started on the B2B aspect of radio."

An opportunity to try out the new concept came when **Spike** began discussions with the fashion and sporting goods company **Nike** over an advertising deal for its B2C station.

"They were interested in an internet radio station for **Nike.com**," Farr says. "Nike had a two-year project that was going to culminate in the **Nike 2000 Olympic site**, and that's really what became the focus of testing of streaming audio and media for **Nike**."

"They wanted to pull the **Nike** brand back and put it into a new

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context, and they were going to be at the Olympics. If a listener was after just what the Olympic gold medal tally is, there's a plethora of sites to deal with for strictly athletic news. Nike wanted to put the Games into a context that was relevant for their true target audience of 15 to 21-year-olds."

To handle the Nike project, Spike needed to gain a special licence from the Recording Industry Association of America (RIAA) that would allow it to broadcast content under a different brand name. In August last year, Spike became the first company in the US

to have negotiated such a licence, and it began developing the software and the music database that would power Radio Free Sydney for a six-week run on the Nike.com site. Spike produced the audio content for the station using a production team in Sydney during the Games, and hosted it on its own server hardware.

Radio Free Sydney consisted of six hours of youth-oriented music looped four times and refreshed each day, with news and interviews with Nike-sponsored Olympic athletes. The audio content proved to be one of the most popular parts of the Nike.com site, attracting 150,000 listeners during the two weeks of the Olympics. Farr says: "For a company like Nike, which spent a lot of money sponsoring these athletes, now it can extend the benefit by having them on the radio."

Nike's Los Angeles-based director of content development, Keith Peters, says the idea for Radio Free Sydney came through the company's experience in building a marketing site for the Atlanta Games in 1996.

"We learnt a lot about the production limitations on a daily basis for a company like ours that is not in the media business," Peters says. "We never set out to cover the Olympic Games - that's not what we do and that's not what people look to us to do. But they do know that we work with athletes such as Cathy Freeman, Vince Carter and Marion Jones, and they expect us to provide insights about them that they can't get anywhere else. So we hit on the idea of audio as a way to deliver information about our athletes in a timely fashion during the Games."

Although the Nike engagement proved the concept could work, more importantly for Spike it also put \$US500,000 in its bank account. Farr says: "One, we got the licence; two, we proved that we could do it; three, the client benefited from it, which is something that often goes

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unheard of in the Web industry."

Abrahams says **Spike Radio** now plans to take what it has developed for Nike to a stage where it can be used to serve many clients simultaneously. "We developed this proprietary technology, which we are patenting. It is a technology-based workflow process ... that allows us to create a database where we rip (copy music from) CDs, including all of the relevant information that we need for our reporting requirements to people like the RIAA. Then out of that database, we can pre-program it with DJs. The key selling point behind what we've got is the fact that it is customised to every client."

Farr believes that clients will be drawn to online radio's ability to keep Web surfers on their sites longer and bring them back more often. "Because the content of radio changes, there is a fundamental rationale for consumers to return to a site," he says. "This is something that corporations have been struggling with. They launch a Web site and get huge amounts of traffic, and once everyone has seen it there's no real reason to keep coming back. It's expensive to update that content."

Although the **Spike** system can handle up to 30 assignments a year, a scalable system is required if the company is to achieve significant growth. So **Spike Radio** is searching for additional venture funding to create a system that can handle more than 1000 projects a year.

"We are like a big content-management engine that manages rich media for Web sites," Abrahams says. "The research company Jupiter (Media Metrix) says that 11% of Web sites have some form of streaming media on them but in two years 89% of Web sites will have streaming media. Where is all that streaming media going to come from, and who is going to manage it? Internal IT teams can't manage it. We've got tremendous experience with streaming, and we've got this engine that can manage it as an outsourced solution."

"There is a proven offline market in content provision of up to \$US700 million (for providing in-store audio content). The market for rich media content ... will be worth \$US2.5 billion by 2003. As the market for streaming media grows, we think within three years we could be turning over between \$US20 million and \$US35 million a year."

Spike has not signed a big new client since Nike, however Abrahams says it is in negotiations with several companies about adding

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customised audio to their Web sites.

That **Spike Radio** is able to survive in the interim on the revenue from its B2C station is due to severe cost-cutting, including the retrenchment of 20 people in October, and an austerity program that has eliminated company cars, credit cards and most mobile phones. Farr says most of these measures have been guided by **Spike Radio's** chairman, Lawrence Maltz, the retired chairman and chief operating officer of the global coffee retailer Starbucks.

"What separates us from the dot-coms of old is that we've also managed our business and our operating expenses," Farr says. "The technology has allowed us to be very efficient with the production. It's a lot of pain but, given this current climate, it is about survival. And we have worked out a way to maintain a level of business and grow without having that fear of closure hanging over us."

If **Spike Radio's** B2B initiative survives and succeeds, it will be one of the first internet-only radio companies to find a profitable business model. Others have flopped, including Australia's **BigFatRadio**, which began streaming in June with an on-air line-up that included popular **6.11-ABC** presenters Michael Tunn, Helen Razer and Debbie Spillane. **BigFatRadio** collapsed after five months.

Thom Mocarsky, vice-president of communications at the US media research firm Arbitron, says the number of listeners turning to Web radio stations is growing slowly but steadily, but it is not yet enough to attract sufficient ad revenue to make the stations profitable. The arrival of new technology to insert ads into audio streams might help the stations generate more revenue, but Mocarsky says that, at the moment, the most promising model is "niche-casting" to specific groups.

"What internet radio has is an ability to reach an audience at a much narrower level than before," Mocarsky says. The most successful online broadcasters are the ones that do not try to imitate what is available from established radio stations. (Twenty-five per cent of internet users in the US have tried Web radio, and 6% are regular listeners. There are no figures for Australian audiences.)

The Melbourne-based streaming media content syndication company Whoopi is following a similar business model to Spike by tailoring services for individual customers. Director Jim Stewart says the company is

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running six audio streams that can be rebranded for specific companies, with their own messages inserted into the audio stream.

Whoopi also makes its audio streams freely available from its site but, Stewart says, they are loss-leaders for the company. "We are not focusing on B2C as a revenue-generator. You would need so much marketing clout to establish a significant audience to generate the advertising dollars. You are better off going with someone who has that audience and community that needs the extra dimension of music."

RADIO MAZE

Successful models for online broadcasting:

Uniqueness: Online stations that do not simply replicate what is available on free-to-air stations stand a much better chance of surviving.

Niche-casting: Finding a small group of listeners that is attractive to advertisers and developing content that appeals directly to that group.

Customised content: The ability to build audio streams specifically suited to branded entities, such as the Spike/Nike Olympic Web site.

Rebranding content: An easier form of customisation, in which another company takes a formatted stream and adds its own branding messages.

<http://www.arbitron.com>

<http://www.spikeradio.com>

<http://www.whoopi.com.au>

----- INDEX REFERENCES -----

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MARKET SECTOR: Consumer Cyclical (CYC)

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